



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

m)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,175	12/26/2001	William J. Drasler		6071
7590	04/01/2004		EXAMINER	
William J. Drasler			THALER, MICHAEL H	
4100 Dynasty Drive				
Minnetonka, MN 55345			ART UNIT	PAPER NUMBER
			3731	14
DATE MAILED: 04/01/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/036,175	DRASLER ET AL.	
	Examiner Michael Thaler	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 February 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 65-91 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 65-91 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

Art Unit: 3731

Claim 88 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The subject matter of claim 88 is present in claim 65, from which it depends.

Claims 65 and 68-88 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 65, lines 11-13 are confusing and inaccurate. It is not seen how the circumferential structural strands can be exposed to the inside and outside surfaces of the tubular member since they form part of these surfaces.

Claims 65-74, 77-86, 88 and 89 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Greenhalgh (2002/0058992). Greenhalgh, in figure 8, discloses flexible strands 57 having axial componency interwoven with flexible strands 59 having circumferential componency and circumferential structural strands (some of the strands 59) wherein any one of said flexible strands having circumferential componency is replaced

Art Unit: 3731

by one of said circumferential structural strands. Some of the strands 59 may be considered to be "structural strands" as claimed since they provide a structural component to the prosthesis. Further, they provide for anti-kinking characteristics for the vascular tubular member as indicated in paragraphs [0014] and [0058] and make up an equal portion of the inner and outer surfaces of the tubular member as claimed. The circumferential structural and the flexible strands have substantially continuous contact with neighboring strands such that the composite wall structure will not significantly leak blood serum (paragraphs [0006], [0014], [0042], [0045] and [0058]). Alternatively, it would have been obvious that some of the strands 59 are "structural strands" for the reasons set forth above. As to claims 70-74 and 77-86, note paragraphs [0005] and [0048] of Greenhalgh. As to claim 89, some of the axial strands of 57 of Greenhalgh are considered to be axial structural strands.

Claims 75 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenhalgh (2002/0058992) in view of Stinson et al. (2002/0082683). Greenhalgh fails to disclose the structural strands as being metal. However, Stinson et al. teach that a vascular graft should include a metal strands circumferentially interwoven into the graft so that it has the

Art Unit: 3731

advantage of having radiopaque markers (paragraphs [0047], [0050], [0054], [0065], [0066] and [0068]. It would have been obvious to include metal strands circumferentially interwoven into the Greenhalgh graft so that it too would have this advantage.

Claim 87 is rejected under 35 U.S.C. 103(a) as being unpatentable over Greenhalgh (2002/0058992) in view of McDonald (5,676,697). Greenhalgh fails to disclose the structural strands extending with both circumferential and axial compency. However, McDonald teaches that stands in a vascular graft should extend helically (i.e. with both circumferential and axial compency) as seen in figure 2, apparently so that the graft may readily expand and contract radially. It would have been obvious to orient the Greenhalgh structural strands helically so that it too would have this advantage.

Claims 90 and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenhalgh (2002/0058992) in view of Dehdashtian (6,344,056). Greenhalgh fails to disclose the axial structural strands extending beyond an end of the tubular member to be attached to an attachment means. However, Dehdashtian teaches that a vascular graft should include such axial strands (at 158 in figures 6 and 7) so that attachment means 152 can be attached thereto to be spaced from the end of the graft. It

Art Unit: 3731

would have been obvious to make so form the axial structural stands of Greenhalgh so that it too would have this advantage.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's arguments with respect to claims 65-91 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3731

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
3/23/04



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731